



## **Report to the Executive Director for Place - Application to divert part of Footpath 7, Folke at Yew Tree Cottage**

**Portfolio Holder:** Cllr D Walsh, Planning

**Local Councillor(s):** Cllr Robin Legg

**Executive Director:** J Sellgren, Executive Director of Place

Report Author: Kerry Smyth  
Title: Definitive Map Technical Officer  
Tel: 01305 221559  
Email: [kerry.smyth@dorsetcouncil.gov.uk](mailto:kerry.smyth@dorsetcouncil.gov.uk)

**Report Status:** Public

### **Recommendation:**

That:

- (a) The proposed diversion of Footpath 7, Folke be accepted and an order made;
- (b) The Order include provisions to modify the definitive map and statement to record the changes made as a consequence of the diversion; and
- (c) If the Order is unopposed, it be confirmed by the Council.

### **Reasons for Recommendation:**

- (a) The proposed diversion meets the legal criteria set out in the Highways Act 1980.
- (b) The inclusion of these provisions in a public path order means that there is no need for a separate legal event order to modify the definitive map and statement as a result of the diversion.
- (c) Accordingly, the absence of objections may be taken as acceptance that the proposed diversion is expedient and therefore Dorset Council can itself confirm the order.

## **1. Executive Summary**

This report considers an application to divert part of Footpath 7, Folke at Yew Tree Cottage as shown on Drawing P215/20/2.

## **2. Financial Implications**

The applicant has agreed to pay in accordance with Dorset Council's usual scale of charges and also for the cost of advertising the order and subsequent notice of confirmation. The law does not permit Dorset Council to charge the applicant for the cost of obtaining confirmation by the Secretary of State if an order is the subject of an objection.

## **3. Well-being and Health Implications**

Use of public rights of way promotes a healthy balanced lifestyle.

## **4. Climate implications**

The proposal will not have any effect on carbon emissions and supports alternative methods of travel to the car.

## **5. Other Implications**

None identified.

## **6. Risk Assessment**

Having considered the risks associated with this decision, the level of risk has been identified as:

Current Risk: LOW

Residual Risk LOW

## **7. Equalities Impact Assessment**

The furniture on the proposed route meets the requirements of British Standard BS5709:2018. The surface and gradient of the proposed new footpath are no less accessible than the current route.

## **8. Appendices**

- 1 Drawing P215/20/2
- 2 Summary of consultation responses
- 3 Drawing P215/20/1

## **9. Background Papers**

The file of the Executive Director for Place (ref. RW/P215).

## **1. Background**

- 1.1. Dorset Council has received an application to divert part of Footpath 7, Folke at Yew Tree Cottage as shown on Drawing P215/20/2 attached as Appendix 1.
- 1.2. The current definitive route of Footpath 7 runs from the middle of a field at point A, east south east across the field, passing through a pedestrian gate and across the garden of Yew Tree Cottage to its junction with Writh Road (D20310), north of Yew Tree Cottage at point B.
- 1.3. The proposed new route of Footpath 7 runs from point A, generally east across a field to the north eastern corner of the field to its junction with Writh Road (D20310), north north west of Yew Tree Cottage at point C.
- 1.4. The proposed new route will be 2 metres wide. A kissing gate will be installed alongside the existing field gate at point C (to British Standard BS5709:2018).
- 1.5. The landowners between points A and B are Sherborne Castle Estates and the applicant. The landowners between points A and C are Sherborne Castle Estates who have agreed to the proposed diversion.
- 1.6. The proposed diversion is being made in the interest of the landowner as the current route of Footpath 7, Folke runs through the garden of the property Yew Tree Cottage and overlooks the back of the property and garden. The diversion would improve the privacy and security for the landowner by diverting this part of Footpath 7 into the adjacent field.
- 1.7. In response to an objection received following the first consultation carried out in October 2020, the applicant agreed to amend the original proposal as shown on Drawing P215/20/1 attached as Appendix 3, to shorten the length of Footpath 7 to be diverted and avoid the use of the farm track which is regularly used to move cattle between fields. The revised proposal is shown in Drawing P215/20/2 attached as Appendix 1.

## **2. Law**

### Highways Act 1980

- 2.1 Section 119 of the Highways Act 1980 allows a footpath or bridleway (or part of one) to be diverted in the interests of the landowner, lessee or occupier or of the public, subject to certain criteria.
- 2.2 A diversion cannot alter the termination point of the path if the new termination point: -
  - (i) is not on a highway; or

- (ii) (where it is on a highway) is otherwise than on the same highway or a connected highway, which is substantially as convenient to the public.

2.3 A public path diversion order cannot be confirmed as an unopposed order unless the Council are satisfied that:

- (a) in the interests of the owner, lessee or occupier or of the public, the diversion to be effected by it is expedient;
- (b) the diversion would not result in a path that is substantially less convenient to the public;

and that it is expedient to confirm the order having regard to:

- (c) the effect the diversion would have on public enjoyment of the footpath as a whole;
- (d) the effect the diversion would have on other land served by the footpath; and
- (e) the effect on the land over which the diversion will run and any land held with it.

2.4 Section 29 of the Highways Act 1980, as amended by Section 57 of the Countryside and Rights of Way Act 2000, says that when making diversion or extinguishment orders Dorset Council must have regard to the needs of agriculture, forestry and nature conservation and the desirability of conserving flora, fauna and geological and physiographical features. "Agriculture" includes the breeding and keeping of horses.

2.5 Section 119(3) of the Highways Act 1980 as amended by the Countryside and Rights of Way Act 2000 provides that the extinguishment of the existing public right of way "is not to come into force until the local highway authority for the new path or way certify that the work has been carried out".

2.6 Dorset Council may itself confirm the order if it is unopposed. If it is opposed it may be sent to the Secretary of State for confirmation.

#### Wildlife and Countryside Act 1981

2.7 Section 53A of the Wildlife and Countryside Act 1981 enables provisions to amend the definitive map and statement required by virtue of a diversion or extinguishment order to be included in the diversion / extinguishment order instead of being the subject of a separate legal event order.

## Human Rights Act 1998 – Human rights implications

- 2.8 The provisions of the Human Rights Act and principles contained in the Convention of Human Rights have been taken into account in reaching the recommendation contained in this report. The articles/protocols of particular relevance are:

Article 8 - Right to respect for private and family life

The First Protocol, Article 1 - Protection of Property.

- 2.9 When considering whether it is expedient to make the order a council must have due regard of any argument put forward by an adjoining landowner that their rights under Article 8 and Article 1 of the First Protocol would be infringed.
- 2.10 Section 28 of the Highways Act 1980 provides that a person with an interest in land affected by the consequence of the coming into operation of a public path order can make a claim for compensation for the depreciation of land value or damage suffered by being disturbed in his enjoyment of land.

## Rights of Way Improvement Plan

- 2.11 Dorset Council's Rights of Way Improvement Plan (ROWIP) is a statutory document setting out a strategy for improving its network of Public Rights of Way, wider access and outdoor public space.
- 2.12 Before confirming a public path creation, diversion or extinguishment order a council or the Secretary of State must have regard to any material provision of a rights of way improvement plan prepared by the local highway authority.
- 2.13 Five themes have been identified for improving access in Dorset of which the following are particularly relevant to the present case and should be considered in relation to this application:

### **Theme 1: The ROWIP's links with other strategies**

- Theme 1.6 Improve accessibility of the network

## **3. Consultation**

- 3.1 The Council carried out a wide consultation in October 2020 on the proposal shown on Drawing P215/20/1 attached as Appendix 3 and one objection was received from the tenant farmer which is summarised in Appendix 2.

- 3.2 The objector explained that although he was in support of the path being moved, he was concerned over the safety of members of the public using the farm track, which was used regularly as a cow path to move up to 350 cows between fields. He requested that the diversion be shortened to not include access along the track.
- 3.3 Cllr Robin Legg, Dorset Council member for Sherborne Rural, was consulted on the application and made no comment.
- 3.4 In response to the objections received, amendments were made to the proposed diversion and a further consultation was carried out in November 2020 (Drawing P215/20/2 attached as Appendix 1).
- 3.5 The revised proposal diverts Footpath 7 from A – B to A – C (Drawing P215/20/2) instead of diverting A – B – C to A – D – E – F (Drawing P215/20/1) which still achieves improved privacy and security for the landowner at Yew Tree Cottage, without compromising the land management for the farmer.
- 3.6 No objections were received to the second consultation.
- 3.7 Responses to both consultations are summarised in Appendix 2. It should be noted that the tenant farmer was consulted regarding the revised diversion and indicated that the amended proposal was acceptable.

#### **4. Discussion**

- 4.1 The proposed diversion is in the interest of the landowner. The new route will significantly improve the security and privacy for the landowner by diverting Footpath 7 into the adjacent field.
- 4.2 The western termination point of Footpath 7 is unaffected by the diversion. The eastern termination point will be moved from point B, approximately 38 metres to point C. The new termination point is on the same highway as the current one.
- 4.3 The current route to be diverted between points A – B is approximately 170 metres long. The proposed new route of Footpath 7 between points A – C is approximately 148 metres long.
- 4.4 This will result in a decreased route length of approximately 22 metres.
- 4.5 This decrease is considered moderate and should not impact on public enjoyment of the footpath. The diverted route will be as easy to walk as the current route. Therefore, the diverted route is substantially as convenient as the current route.

- 4.6 The proposed diversions will improve the accessibility for all users as there will be fewer gates along the new route, with only one kissing gate proposed at point B, compared to two pedestrian gates along the current route at either side of the entry and exit to the garden of Yew Tree Cottage. A section of electric fencing will also be removed along the eastern field boundary.
- 4.7 The diversion would have no material effect on the land served by the current route or over which the new routes.
- 4.8 The diversion will have no adverse effect on agriculture, forestry, flora, fauna and geological and geographical features.
- 4.9 The proposal affects both the applicant's land and land belonging to Sherborne Castle Estates (who have no objection). Given the route of the proposed diversion it is unlikely that compensation would be payable under Section 28 of the Highways Act 1980.
- 4.10 Some works will have to be carried out on the new route to improve it for public use:
- Kissing gate to be installed at point C to British Standard BS5709:2018
  - Section of electric fencing to be removed along eastern field boundary
  - Warning signs to be erected along remaining electric fencing (as appropriate).
- 4.11 The works will be carried out and funded by the applicant.
- 4.12 The order will be confirmed only on completion of these works. If confirmed by the Secretary of State, the order will provide that the diversion is not effective until the works have been completed and certified.
- 4.13 If the order is unopposed the order should be confirmed as the diverted route is expedient and would not result in a path that is substantially less convenient to the public.
- 4.14 The diversion order fulfils the following objectives in the Rights of Way Improvement Plan to improve Dorset's network of Public Rights of Way, wider access and outdoor public space:
- Theme 1.6 Improve accessibility of the network.
- 4.15 The reduction in the number of gates along the new route, and the removal of a section of electric fencing, will improve the accessibility of the footpath.

## **5. Conclusions**

- 5.1 The application to divert part of Footpath 7, Folke meets the tests set out under the Highways Act 1980 and therefore should be accepted and a diversion order made.
- 5.2 The Order should include provisions to modify the definitive map and statement to record the changes made as a consequence of the diversion.
- 5.3 If there are no objections to a public path order, as the criteria for confirmation have been met the order should be confirmed.
- 5.4 If objections are received to the order which are similar in nature to those already considered, the order should be confirmed.

### **Matthew Piles**

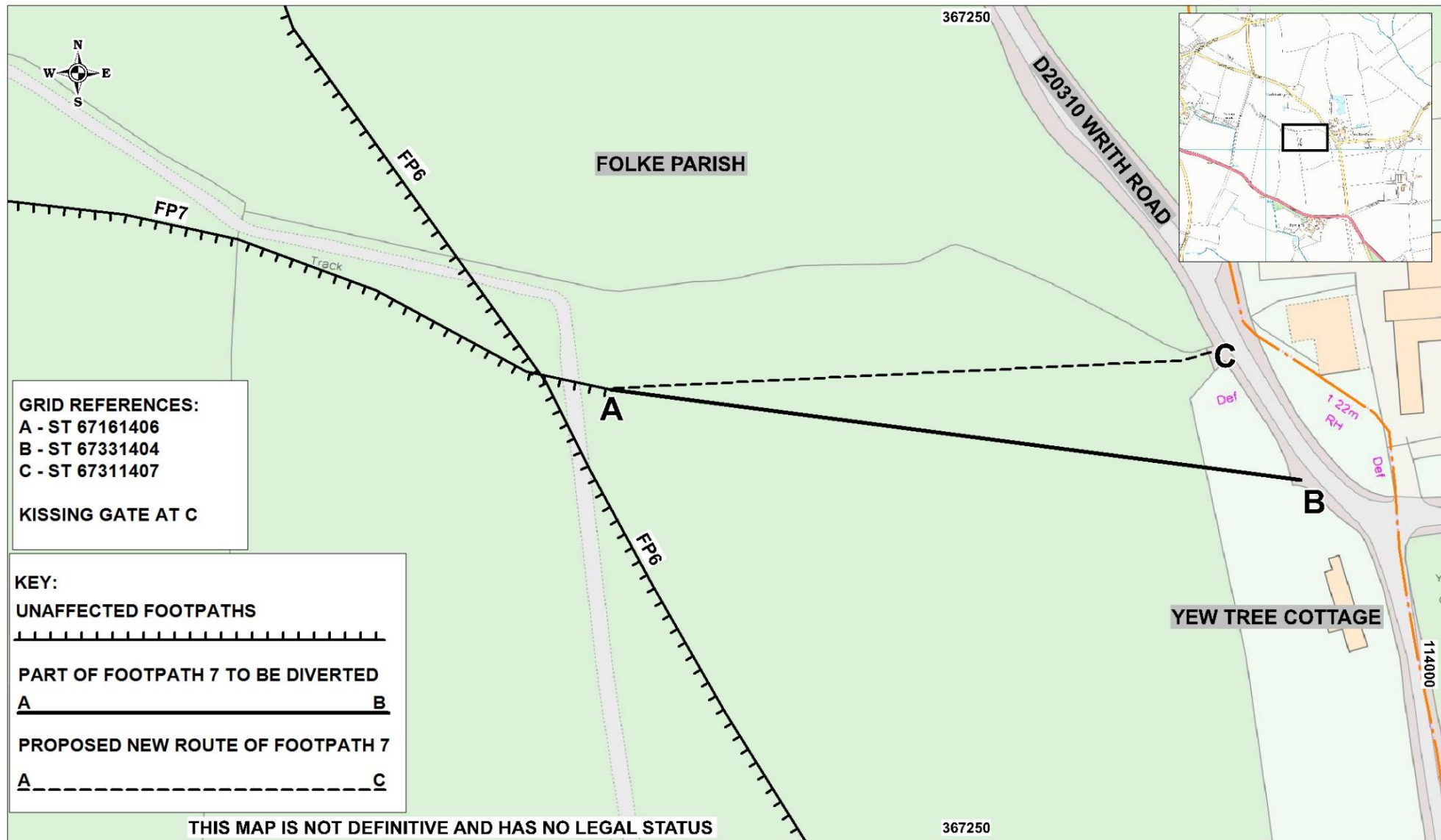
Corporate Director for Economic Growth and Infrastructure

**January 2021**

### **Footnote:**

Issues relating to financial, legal, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.





**SECTION 119 HIGHWAYS ACT 1980**

**APPLICATION TO DIVERT PART OF FOOTPATH 7, FOLKE AT YEW TREE COTTAGE**

**Ref: P215/20/2**  
**Date: 11/09/2020**  
**Scale 1:1250**  
**Drawn By: KJS**  
**Cent X: 367192**  
**Cent Y: 114058**

**Dorset Council**

© Crown Copyright and database rights 2020 Ordnance Survey 0100060963. You are permitted to use this data solely to enable you to respond to, or interact with, the organisation that provided you with the data. You are not permitted to copy, sub-licence, distribute or sell any of this data to third parties in any form.

Aerial Photography © UK Perspectives 2002 & © Getmapping; 2005, 2009 & 2014. Geomapping Plc and Blueky International Limited [2017]

## Summary of consultation responses – November 2020 (second consultation)

### Supporting the proposed diversions:

Name	Comments
Tenant Farmer	Happy with the amended proposal.
The Ramblers	On the assumption there has been no fundamental change to the surface of the field, I have no objection to the proposed route shown in P215/20/2, and welcome the addition of a kissing gate at point C.
British Horse Society	No objection in principle to the proposal.

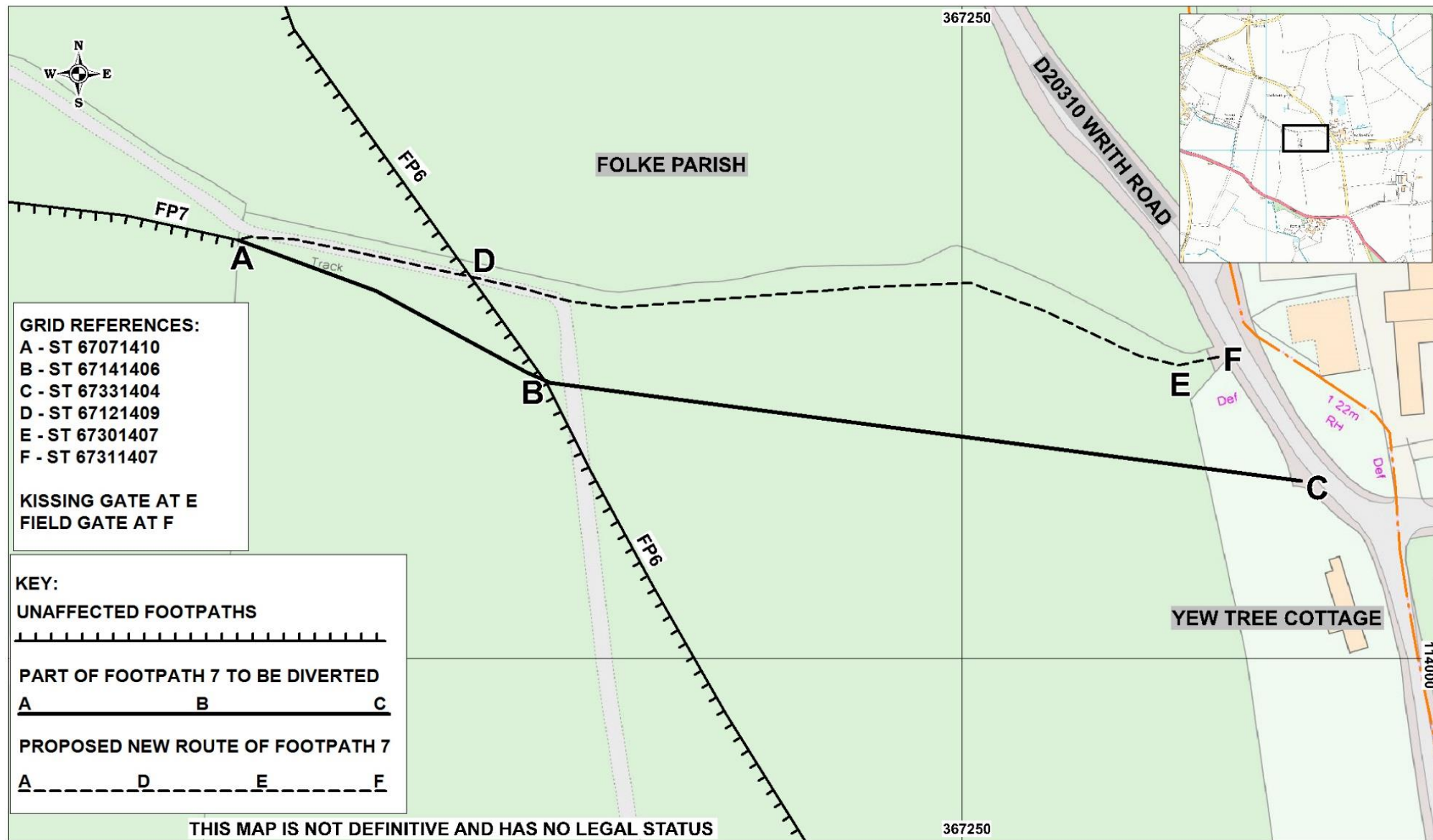
### Other responses received:

Name	Comments
Senior Archaeologist, Dorset Council	There are at present no recorded archaeological finds or features or historic buildings on or in the immediate vicinity of the routes affected by this proposal. Consequently, I do not feel that historic environment considerations constitute a constraint in the context of this proposal.

## Summary of consultation responses – October 2020 (first consultation)

### Objecting to the proposed diversions:

Name	Comments
Tenant Farmer	<p>I am in full support of the path being moved out of the garden of Yew Tree Cottage. However, I am not in agreement that the diverted path should follow the cow track because of the obvious safety issues. The cow track is purpose built to move up to 350 cows around regularly.</p> <p>In my view the diverted path should stay as it is from points A to B then from point B should go straight to point F. At point F there should be a kissing gate installed alongside the existing Field gate. The field gate could then be kept locked to avoid it being left open at any time. The electric fence wire at point E could then be permanently removed.</p>



**SECTION 119 HIGHWAYS ACT 1980**

**APPLICATION TO DIVERT PART OF FOOTPATH 7, FOLKE AT YEW TREE COTTAGE**

**Ref: P215/20/1**  
**Date: 11/09/2020**  
**Scale 1:1250**  
**Drawn By: KJS**  
**Cent X: 367192**  
**Cent Y: 114058**

**Dorset Council**

© Crown Copyright and database rights 2020 Ordnance Survey 0100060963. You are permitted to use this data solely to enable you to respond to, or interact with, the organisation that provided you with the data. You are not permitted to copy, sub-licence, distribute or sell any of this data to third parties in any form.

Aerial Photography © UK Perspectives 2002 & © Getmapping; 2005, 2009 & 2014. Getmapping Plc and BlueSky International Limited [2017]

**Recommendations accepted:**

**Signed:**

.....V Penny.....

Date:.....28 January 2021.....

**Vanessa Penny**

Definitive Map Team Manager

Spatial Planning